IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

First appeal No. 125 of 2005

1. Tehri Hydro Development corporation Ltd. (THDC) through its General Manager (Project), Their, District-Tehri Garhwal.

2. State of Uttaranchal through Collector, Tehri Garhwal.

..... Appellants

Versus

1. Shri Bahart Singh S/o Sri Kaliya, R/o Village and P.O. Malli Deval, Sub Division Udaypur, District- Tehri Garhwal.

2. Addl. District Judge/FTC Tehri Garhwal.

..... Respondents.

Sri V.B.S. Negi, learned counsel for the contesting appellant.
Sri Rajendra Dobhal, learned counsel for the respondent Nos. 1& 2.

Dated:- September 6, 2006.

Hon'ble P.C. Verma, J.
Hon'ble M.M. Ghildiyal, J.

This appeal, preferred under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), is directed against judgment/ award dated 30.11.2004, passed by Addl. District Judge/Fast Track Court, Tehri Garhwal in Land Acquisition Reference No. 18 of 2002, whereby the reference made by the Collector, Tehri Garhawal under Section 18 of the Act was allowed and the claimant was held entitled for compensation of Rs. 4,11,487/- instead of Rs. 37,181/- for the acquired land. The claimant was further held entitled to get solatium an other benefits and additional amount at the

rate of 12% per annum under Section 23 (1-A) of the Act. The claimant was further held entitled to get interest at the rate of 9% per annum on the additional amount w.e.f. 07.08.1993 to 17.2.1997 and on these sums solatium at the rate of 30% alongwith interest at the rate of 12% per annum on the increased amount of compensation from 18.2.1997 till the date payment.

2. Brief facts of the case are that irrigated land measuring 11 Nali 7 Muthi, land of category-I measuring 7 Nali 4 Muthi and 10 Muthi land of category-II belonging to the claimant (respondent No. 1 herein) situated at Viilage-Malideval, District Tehri Garhwal was acquired by the Opp. parties/appellants for the purposes of construction of Tehri Dam. Notification under Section 4 of the Act was published in the official gazette on 07.08.1993. The Special Land Acquisition Officer, after perusing the evidence on record and hearing the objections, determined the value of the land at the rate of Rs. 2434.78 per Nali for irrigated land, Rs. 1217.39 per Nali for category-I land and Rs. 811.59 per Nali for category-II land and awarded Rs. 37,181/- in total as compensation of the acquired land relying the sale deeds of Village-Tiwad, dated 31.7.1991. The award was made by the Special Land Acquisition Officer on 31.3.2000, aggrieved by which reference was got made under Section 18 of the Act. The land owner alleged that this Village-Malideval situate on Tehri-Uttarkashi National Highway and the acquired land lies on the road. The land of this village is better than the land of other villages. All the facilities were available there. The land was very fertile and every grain and fruits, Vegetables are grown on the

said land. The land of Vilaage-Baylali is parallel to the land of claimants and the Special Land Acquisition Officer given his award on 03.8.1995 for the acquired land of this village relying eh sale deed of the village of the claimants of the year 1990 in which the rate was fixed for the irrigated land at Rs. 36,000/- per Nali, Rs. 18,000/- per Nali for category-I and Rs. 12,000/- per Nali for category-II land. After deducting 25% the compensation was awarded for the acquired land of village-Bayali which was 200 metres away from the main road while the land of Village-Malideval (the village of the claimants) lies on the main road and is better than the land of Village-Bayali. As such the value of the land of the claimants should have been assessed more than the rate fixed fro the acquired land of Village-Bayali. The claimants claimed the compensation for the acquired land at the rate of Rs. 1,50,000/- per Nali for the irrigated land, Rs. 90,000/- per Nali for category –I and Rs. 25,000/- per Nali for category-II land. The reference court, therefore, enhanced the amount of compensation assessing the value of the land at the rate of Rs. 27000/- per Nali for irrigated land, Rs. 13,500/- per Nali for category-I and Rs. 9,000/- per Nali for category-II land and awarded a total compensation of Rs. 4,11,487/- instead of Rs. 37,181/- awarded by the Special Land Acquisition Officer. Aggrieved by the impugned award, the appellant has come up in the appeal.

3. We have heard learned counsel for the parties and carefully examined the evidence on record. The only argument made by the learned counsel for the appellant is that the award relating to the actual value of the land

acquired passed by the reference court is highly excessive and the sale deed, which was made basis, is not proper. In support of his case, the claimant examined himself as P.W.1 in the witness box. He also filed papers as documentary evidence, per list 22-C. The Opp. Parties/appellants also produced Sri Bachan Singh Negi as D.W.1 in support of their case but did not adduce any documentary evidence, though they filed documents papers Nos. 6-C in connection with eh award of claimant.

4. It is undisputed that the claimant's Village-Malidevla is situated on Tehri-Uttarkashi National Highway and the acquired land also lies on the same highway and near to Tehri City. It was also admitted to the opposite parties that no sale deed of Village-Malideval of the period of three years prior to the date of publication of notification in the gazette was available. It is also undisputed that there was ban on execution of sale deeds from the year 1992 due to construction of Tehri Dam. It has come in the evidence of P.W. 1 that the acquired land is fertile and is of good quality and every crops are grown on the said land. The land lies on the main road of Tehri city and every facility like, Bank, Post Office, Hospital, intermediate College etc. are available there.

5. The learned counsel for the respondent (claimant) vehemently contended that the Special Land Acquisition Officer made an award on 03.8.1995 of the land of Village-Bayali which is situated parallel to the village of claimants i.e. Village-Malidevla. In that award

The Special Land Acquisition Officer took the sale deed of Village-Malideval of the year 1990. In the said sale deed the value of the land was fixed at Rs. 36,000/- per Nali for irrigated land, Rs. 18,000/- per Nali for category-I Land and Rs. 12,000/- per Nali for category-II land. Village-Bayali is situated 200 metres away from the main road, while Village-Malideval is situated on the main road. The Special Land Acquisition Officer committed error in making the sale deed of Village-Tiwad as exemplar sale deed in this case. The reference court while recording its finding in issue No. 1 came to the conclusion that the Special Land Acquisition Officer committed grave error in not taking into account the rate fixed for the land of Village-Bayali. It has been proved from the evidence on record that eh land of Village-Malidevla is good quality land in every angle than the land of Village-Bayali. There was ban in execution of sale deeds from 25.1.1992 due to construction of Tehri Dam and in that circumstance the value of the land of Village-Bayali should have been taken for the land of Village-Malideval and the reference court has rightly assessed the value of the acquired land. We are in agreement with the finding recorded by the learned reference court. The impugned order needs no interference by this court.

6. In view of above, the appeal fails and is dismissed.

(M.M. Ghildiyal, J.) **(P.C. Verma, J.)**
06.09.2006 **06.09.2006**

P.Singh